

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.20775 of 2011

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Dated: 16.07.2015

Between:

The Animal Husbandry Department Employees
Cooperative House Building Society Limited
Rep. by its Secretary Sri G.Radhakrishna.

.. Petitioner

and

State of Andhra Pradesh rep. by its
Secretary (Co-operation), Secretariat,
Hyderabad, and others.

.. Respondents

Counsel for the Petitioner: Mr. Ch. Dhanamjaya

Counsel for the Respondents: AGP for Co-operation

The Court made the following:

ORDER:

This writ petition is filed for a Mandamus to set aside
proceedings in Rc.No.324/06 E(Coop.) dated 18.07.2007 of

respondent No.2 and consequential proceedings in Rc.No.1/2011 Inquiry dated 11.07.2011 of respondent No.6.

This case has a litigious history. One V.V.Ramana, Ex-Secretary, and one J.Satyavathi, Ex-Director of the petitioner Society, filed a petition before respondent No.4 making serious allegations against the managing committee of the petitioner Society in connection with running of its affairs. Respondent No.4, in turn, has ordered a preliminary enquiry by appointing Smt. D. Satyashree, Sub-Divisional Cooperative Officer of Visakhapatnam, and B.Mohan Rao, SI/Auditor District Co-operative Central Bank Limited, as Enquiry Officers. The Enquiry Officers submitted their report dated 06.06.2007. Based on the said enquiry report, respondent No.4 has addressed letter in RC.No.187/2006 C dated 18.07.2007 to respondent No.2, recommending holding of a statutory inquiry into the constitution, working and financial affairs of the petitioner Society. Based on the said material, respondent No.2 formed an opinion that it is necessary to hold such an inquiry. Accordingly, respondent No.2 has issued proceedings in Rc.No.324/06 E (Coop.), dated 18.07.2007, appointing the two officers, who have submitted the preliminary enquiry report, as Inquiry Officers to hold an inquiry under Section 51 of the A.P. Cooperative Societies Act, 1964 (for short, 'the Act'). Feeling aggrieved by the said proceedings, the petitioner has filed W.P.No.16460 of 2007. On 07.08.2007, this Court has granted an interim order staying inquiry, as a result of which inquiry was stalled. However, this Court, by order dated 24.03.2011, dismissed the said writ petition on the short ground that under bye-law No.29 (b) of the petitioner Society's bye-laws, the Secretary shall be the Officer to sue and be sued on behalf of the Society and that the writ petition was filed in the name of the Society through its President Dr. Anupalli Appa Rao. It is also noticed that the term of the said person as President has also expired. For those reasons, this Court, while holding that the very constitution of the writ petition itself was defective, has dismissed

the same. Following the dismissal of the said writ petition, the Special Cadre Deputy Registrar/District Co-operative Officer (FAC), Visakhapatnam, has issued fresh proceedings in Rc.No.324/06 B (Coop.) dated 18.06.2011, appointing one V.Jyothswara Rao, Assistant Registrar/Sub Division, Visakhapatnam as Inquiry Officer to conduct Inquiry under Section 51 of the Act. The petitioner represented by its Secretary has filed the present writ petition questioning both the initial order dated 18.07.2007 as well as the later order dated 18.06.2011.

This Court, by order dated 04.08.2011, has again stayed holding of inquiry and on the strength of the said interim order, the inquiry has again been stalled.

At the hearing, Mr. Ch.Dhananjaya, learned counsel for the petitioner, submitted that under Section 51 of the Act, the Registrar can either *suo motu* or on the application of a Society to which the Society concerned is affiliated, or of not less than 1/3rd of the members of the Committee, or of not less than 1/5th of the total number of members of the Society, hold an inquiry or direct some person authorized by him to hold an inquiry into the constitution, working and financial condition of a society and that in the instant case, the inquiry was ordered at the instance of one Ex-Director and a former Secretary of the petitioner Society and therefore respondent No.2 has not exercised his powers in conformity with Section 51 of the Act.

In order to appreciate the submission of the learned counsel for the petitioner, Section 51 of the Act needs to be considered. This provision to the extent it is relevant reads as under:

“The Registrar, may of his own motion and shall, on the application of a society to which the society concerned is affiliated, or of not less than one third of the members of the Committee, or of not less than one fifth of the total number of members of the society, hold an inquiry or direct some person authorized by him by an order in this

behalf to hold an inquiry into the constitution, working and financial condition of a society. Such inquiry shall be completed within a period of four months and the report of inquiry along with the findings of the Registrar thereon shall be communicated to the managing committee of the society. It shall be the responsibility of the managing committee to place the inquiry report before the General Body or Special General Body convened for the purpose for its information, within a period of one month from the communication of the inquiry report by the Registrar. The Registrar shall be competent to initiate action under the provisions of this Act, if the committee fails to take action as aforesaid”

On a careful analysis of the above-mentioned provision, it would be evident that the Registrar is authorized to exercise his power to order an inquiry in two situations, namely, (1) on his own motion (*suo motu*) and (2) on the application of a Society to which the Society concerned is affiliated or of not less than 1/3rd of the members of the Committee or of not less than 1/5th of the total number of members of the Society. If the Registrar chooses to exercise his power on an application, it is mandatory that requirements contained in Section 51 of the Act need to be satisfied, namely; that either the application should have been made by the Society to which the Society concerned is affiliated or by not less than 1/3rd of the members of the Committee or by not less than 1/5th of the total number of the members of the Society. However if the Registrar chooses to exercise his *suo motu* power, he can straightaway order an inquiry. Of course in such a case, he needs to arrive at a *prima facie* satisfaction based on relevant material that institution of inquiry into the constitution, working and financial condition of the society is necessary.

It cannot be said that in the present case the second limb of Section 51 of the Act, namely, application to be made by the affiliated society or the required number of members of the Committee or of the society, is satisfied. Therefore, institution of inquiry can be justified

only based on the first limb of the provision, namely, exercise of *suo motu* power of the Registrar. When an authority seeks to exercise *suo motu* power, it cannot exercise such power in vacuum. Some one either connected with the affairs of the society or an Officer subordinate to him has to necessarily bring to the notice of the Registrar about the functioning of the society. If the second limb of the provision cannot be satisfied in view of shortage of members prescribed therein, it cannot be said that the persons who are in minority are not entitled to approach the Registrar bringing to his notice about the alleged malfunctioning of the society. If the Registrar makes such information as basis for ordering an enquiry, no exception could be taken to such exercise of power.

An exactly similar contention, which is raised in this writ petition by the learned counsel for the petitioner, was raised in W.P.No.1356 of 2012. The learned Single Judge, by order dated 23.01.2012, repelled the said contention and dismissed the said writ petition filed questioning the institution of inquiry under Section 51 of the Act. The aggrieved society has carried the matter in Writ Appeal No.131 of 2012. A Division Bench, in its judgment dated 07.08.2012 in W.A.No.131 of 2012 (**Between The Fishermen Marketing Coop. Society, Moosi Project, Kethepalli Mandal, Nalgonda District rep. by its President Sadula Narsaiah and The Commissioner of Fisheries, Matsya Bhavan, Shanthi Nagar, Vijayanagar Colony, Hyderabad and others**), held as under:

“In the impugned proceedings in the writ petition the 1st respondent under Section 51 of the Act directed Sri.K.Gurappa, General Manager, A.P.State Fishermen Cooperative Society Federation Limited, Hyderabad to conduct enquiry into the functioning, affairs and financial irregularities with special reference to the allegations pertaining to Moosi Project, Nalgonda District and submit a report within a period of one month from the date of receipt of that order. The challenge thrown before the writ court was that an enquiry under Section 51 of the Act can be initiated either (1) of his motion or (2) on the application of

the Society to which the society concerned is affiliated or of not less than one-third of the members of the committee or of not less than one-fifth of total number of members of the Society. **It was stated by the writ petitioner that in the instant case the proceedings which have been initiated under Section 51 of the Act is not suo motu, but on the basis of a representation filed by the Ex-Chairman of the Society and other members of the Society. It appears that the Officer or a Registrar cannot function even suo motu without having any information from any person with regard to the functioning of the Society which is in question and therefore has sought to be submitted before us that suo motu power of the Registrar cannot be given effect to at that point of time, since it is tried to be urged before us on behalf of the appellant/writ petitioner that if the Registrar wants to exercise his power suo motu he has to do that without any representation from any quarter.**

In our opinion, such functioning on suo motu cannot be based on imagination, there must be some basis which is to be placed before the Registrar to act suo motu. We can also draw analogy from the fact that when a Court wants to issue a suo motu Contempt Rule, in the said jurisdiction, at that point of time also, it would require that some one should bring to the notice the fact of disobedience of the order so passed by the Court, and then only the Court can issue a suo motu Rule in the matter in question, that too if it finds it necessary. Therefore, in our considered opinion, the word suo motu does not mean that without any information even the enquiry can be done. The word suo motu is based on the facts or information, which comes to the notice of the authority and upon his satisfaction that the enquiry is necessary, then only he can function to act in the matter suo motu. It is to be noted that in this case, the 1st respondent Commissioner/ Registrar received such information by way of a representation of the Ex-President and other members. Further, while exercising suo motu power, the 1st respondent did not order only in respect of the allegations made in the representation, but also ordered enquiry into entire functioning, affairs and financial irregularities of the Society. (Emphasis added)

In the instant case, respondent No.2 has not straight away acted on the representations of V.V.Ramana and J.Satyavathi. Indeed those

representations were made to respondent No.4, who got the preliminary enquiry conducted and submitted his opinion to respondent No.2. Based on the preliminary enquiry report, respondent No.2, in turn, relied upon the said material to institute an inquiry under Section 51 of the Act. Therefore, on the facts of this case, I am of the opinion that respondent No.2 has exercised *suo motu* power under Section 51 of the Act based on the material available before him and not merely on the basis of the complaints of the Ex-Secretary and Ex-Director of the petitioner Society.

In the light of the above facts and position of law, I am of the opinion that the impugned orders are not liable for interference and the writ petition is accordingly dismissed. As the petitioner has stalled the inquiry for more than eight years, it is saddled with costs of Rs.10,000/- payable to the Chief Justice Relief Fund, within one month from the date of receipt of the order.

As a sequel to dismissal of the writ petition, interim order dated 04.08.2011 shall stand vacated and W.P.M.P.No.25232 of 2011 and W.V.M.P.No.148 of 2012 shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

16.07.2015.

v v